

Remarks

The Abstract, Specification and Claims have been rewritten to comply with the Office Action, dated July 14, 2004. The new Claims are submitted to be patentable over the prior art of record.

In response to each of the items in Office Action, dated 7/14/2004, Applicant states as follows:

(1) To item number 1, Applicant has amended Applicant's Patent Application and rewritten the Abstract and the Specification to comply with the Office Action.

(2) To item number 2, Applicant has cancelled Claims 10 and 12; therefore, the drawings do not need to be updated.

(3) To item number 3, Applicant has cancelled his previous Claims of record and submitted newly drafted Claims, taking into account the Office Action's statements in item 3. The new Claims are submitted to be patentable over the prior art of record.

(4) To item number 4, Applicant acknowledges code section 35 U.S.C. 103(a). Under section 103; the scope and content of the prior art is determined; the differences between the prior art and the claims at issue are ascertained; and, the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or non-obviousness of the subject matter is determined. Such secondary considerations are: commercial success, long felt but unresolved need, failure of others, praise, and unexpected results.

Graham v. John Deere, 383 U.S. at 17 – 18. The Federal Circuit has instructed that these considerations must be considered in every case, both by the courts and PTO. Custom Accessories, Inc. v. Jeffrey-Allan Industries, Inc., 807 F. 2d 955 (Fed. Cir. 1986).

The Office Action lists the prior art of Khadem, application number 2002/0098318 A1, and Atwood, U.S. Patent No. 6,308,936 B1.

Applying the above-mentioned test, the differences are: (1) Atwood's invention uses plastic to form his guardrail post block; the current invention uses recycled tire plank(s) to form the guard rail support; (2) Atwood's invention uses cavities or channels formed in its block; the current invention does not; (3) Atwood's invention's dimensions are 6"x 8"x 14"; the current invention dimensions are 5" to 7" x 5" to 7" x 13" to 15" or more; (4) Atwood does not disclose the size of the hole or its location; the current invention discloses both. With respect to Khadem, it discloses making a block from recycled tire plank(s) but in comparison to the current invention, but Khadem does not disclose: (1) the dimensions to make the block; (2) the size of the hole; or (3) the hole's location.

The next issue of the test is: would the level of ordinary skill in the industry, at the time to the invention was made, know to combine the patent application, Khaadem, and patent, Atwood, and then change them, to conform to the current invention, with its specific techniques and the dimensions of the block and size of the hole and the specific location of the hole?

Finally, against the foregoing background, one must analyze the secondary considerations to determine un-obviousness. Such secondary considerations include, but are not limited to, commercial success, satisfaction of a long felt need, and superiority over the prior art. Applicant has submitted his Affidavit and it states, in penitent part, with emphasis supplied, as follows:

"My invention disclosed in the patent application and claimed will have *commercial success*, in my opinion, because the Federal Highway Administration has approved it for a support to highway guardrails throughout the National Highways System (NHS) in the United States. Therefore, my invention, the highway guardrail support made from recycled tires, should sell in large quantities because its use would be incorporated into the National Highways System. The acceptance for using of my invention for supporting highway guardrails throughout the National Highways System in the United States, based on the required Pendulum Test performed by Safety Quest, Inc. in College Station, Texas, is stated in the letter from (copy attached):

Fredrick G. Write, Jr.,
Program Manager, Safety
Geometric and Roadside Design Br.
Federal High Way Administration, HNG-14
400 Seventh Street, SW, RM3134
Washington, D.C. 20590

It is my belief that the present invention *satisfies a long felt need* in the industry in that, at present, a wooden block is used as a support for the guardrail in the federal highway system, and when the wooden blocks are changed, due rot and safety issues, my invention, the highway guardrail support made from tires, provides a much safer guardrail support system, because of its greater flexibility and energy absorbency in comparison with wooden block. It is environmentally friendly since it is made of totally recycled material. In addition, it provides a longer life, a more stable, water resistant, and much more economical than the wooden block.

My invention's *dimensions and specific hole diameter and location have been designed to meet the current Federal Highway Administration's guidelines* for highway guardrail support, and *it is superior, because of such design*, over the prior art, including the wooden blocks and patents cited by the Examiner.

That, in my opinion, the aforementioned commercial success, satisfaction of a long felt need, and superiority over the prior art with respect to my invention is not obvious to a person skilled in the art of providing highway guardrail supports because: (a) the combination of all the elements I have made and disclosed in my patent application is different than what has been done before; (b) my invention is designed, by the specific dimensions, hole diameter and location, and constitution of materials so as to specifically be used for a better way to support a highway guardrail than what is currently on the market; and (c) such combination is not obvious to one skilled in this particular art."

While the Patent Office may believe the invention is deemed obvious to one skilled in the art, Applicant respectively requests that the Patent Office carefully consider Applicant's response and the Affidavit herein supplied and realize that even seemingly

minor changes can result in adoption by others, and be determined as unobvious. *See*, Eibel Products Co. v. Minnesota & Ontario Paper Co., 261 U.S. 45 (1923).

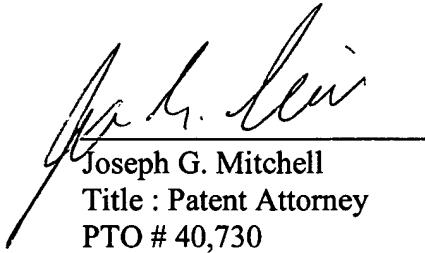
Applicant has shown that the present invention is unobvious to one skilled in the art. There are differences in the present invention and those cited by the Patent Office. Applicant's invention is unobvious to one skilled in the art and respectively requests the Patent Office issue his patent.

(5) To item number 5, Applicant states that the patents cited do not prevent Applicant from obtaining a patent for his invention.

Conclusion

For all the foregoing reasons, Applicant submits that the specification, drawings, and claims are now in proper form, and that the claims all define patentably over the prior art. Therefore, Applicant submits that his patent application is now in condition for allowance, which action he respectively requests.

Very Respectively,



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